

**STATE OF INDIANA
DEPARTMENT OF STATE REVENUE**

IN REGARDS TO THE MATTER OF:

**INDIANA BLACK EXPO
ECONOMIC DEVELOPMENT CORPORATION
DOCKET NO. 01-0209**

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND DEPARTMENTAL ORDER**

An administrative hearing was held on Tuesday, September 25, 2001 in the office of the Indiana Department of State Revenue, 100 N. Senate Avenue, Room N248, Indianapolis, Indiana 46204 before Bruce R. Kolb, an Administrative Law Judge acting on behalf of and under the authority of the Commissioner of the Indiana Department of State Revenue.

Petitioner, Indiana Black Expo Economic Development Corporation, was represented by Charles Gynn, President and CEO. Steve Carpenter appeared on behalf of the Indiana Department of State Revenue.

A hearing was conducted pursuant to IC 4-32-8-1, evidence was submitted, and testimony given. The Department maintains a record of the proceedings. Being duly advised and having considered the entire record, the Administrative Law Judge makes the following Findings of Fact, Conclusions of Law and Departmental Order.

REASON FOR HEARING

The Petitioner's CG-1 and CG-2 (Indiana Charity Gaming Qualification Application and Indiana Department of Revenue Annual Bingo Application) were received by the Department on May 11, 2001. The Department denied Petitioner's Indiana Charity Gaming License Application in a letter dated August 24, 2001. The Petitioner protested in a timely manner. A hearing was conducted pursuant to IC § 4-32-8-1.

SUMMARY OF FACTS

- 1) Petitioner listed five individuals on its CG-2 who were not members of the organization in violation of IC 4-32-9-28.
- 2) Petitioner's application failed to provide sufficient information for the Department to determine that the organization was a qualified organization pursuant to 45 IAC 18-2-1.
- 3) The Department required that the Petitioner provide three (3) different documents for 1996 through 2001.
- 4) The instruction page of the Form CG-1 lists the acceptable documents.
- 5) The Department stated that the Petitioner was required to provide one (1) internal document, and two (2) external documents for the years at issue.

- 6) Petitioner failed to sign its CG-1 and CG-2 violating IC 4-32-9-5(b).
- 7) The lease provided by Petitioner places liability on the lessee. This could cause the lessee to exceed the rent limitation as provided in IC 4-32-9-20.
- 8) Petitioner failed to clarify on its CG-2 whether it leased, owned or had equipment donated to it for charity gaming.

FINDINGS OF FACTS

- 1) On June 19, 2001, a Department of Revenue investigator met with a representative of Petitioner's organization in order to review a current membership roster. (Record at 10).
- 2) The membership list turned over to the Department was originally obtained from the Petitioner's bookkeeper. (Record at 10).
- 3) A total of five (5) individuals listed on Petitioner's application to conduct charity gaming were not on the Petitioner's membership roster. (Dept. Exhibit C).
- 4) The Department's witness stated that the lease entered into by the Petitioner contains a damage clause. Thus, according to the Department, any damage done to the leased premises may result in the rental payment for that month to exceed the statutory limit. (Record at 26).
- 5) Additionally, the lease contains no beginning and ending date, and was not signed by the lessee. (Record at 26).
- 6) The Department required Petitioner to submit one (1) internal document and two (2) external documents for each year to prove its continuous existence. (Record at 27-28).
- 7) The taxpayer contends that it had been in existence for at least five (5) years at the time the application was filed. However, Petitioner stated during the hearing, regarding the information submitted with its application, "...we're speaking of the license, the operation allowed, and I guess that entails information showing that we were in existence for more than five years. After I looked through the information, I guess you needed more information about our existence." (Record at 45).
- 8) The Petitioner's CG-1 (Indiana Charity Gaming Qualification Application) and CG-2 (Annual Bingo License Application) were not signed or dated. (Record at 26).
- 9) Additionally, Petitioner answered "NO" to the questions contained on lines 7 and 8 of its CG-2. Question 7 states, "Is any tangible personal property (i.e. tables, chairs, bingo blowers, etc.) being leased or donated to you for this event? Question 8 states, "Does your organization own bingo equipment? (Record at 25).
- 10) Petitioner's charity gaming equipment was donated by Indiana Black Expo, Inc., and is the equipment Indiana Black Expo used when they conducted gaming at location called Southwest Bingo. (Record at 50).

STATEMENT OF LAW

- 1) Pursuant to IC 4-32-9-20, if a facility is leased for an allowable event the rent may not exceed two hundred dollars (\$200) per day.
- 2) IC 4-32-9-28 states, "An operator must be a member in good standing of the qualified organization that is conducting an allowable event for at least one (1) year at the time of the allowable event."
- 3) IC 4-32-9-29 states, "A worker must be a member in good standing of a qualified organization that is conducting an allowable event for at least thirty (30) days at the time of the allowable event."
- 4) Pursuant to IC 6-8.1-5-1, the Department's findings are prima facie evidence that the Department's claim is valid. The burden of proving that the findings are wrong rests with the person against whom the findings are made. See Portland Summer Festival v. Department of Revenue, 624 N.E.2d 45 (Ind.App. 5 Dist. 1993).
- 5) According to page three of the Department's form CG-1, the relevant facts in determining continuous existence could include a combination of the following items:
 - Indiana Forms IT-35 AR and IT-20NP;
 - Federal Form 990 and/or 990T if applicable;
 - minutes of meetings;
 - bank statements;
 - dated newspaper articles;
 - any type of dated state or local licensing permits, such as alcoholic beverage licenses and registration with the Secretary of State's office;
 - account payables, including copies of dated invoices;
 - account receivables, including copies of dated invoices;
 - utility bills;
 - dated leases;
 - canceled checks (representing each of the five years);
 - bylaws that are dated;
 - dated articles of incorporation;
 - affidavits or letters of confirmation from the national or parent organization on organization letterhead; and
 - descriptions and results of fund-raising activities for the last five years.
- 6) 45 IAC 18-2-1 states: (a) To obtain a license to operate an allowable event, a qualified organization must submit a written application on a form prescribed by the department.(b) The application shall include the following information: * * * Sufficient facts for the department to determine that the organization is a qualified organization, including, but not limited to, the following: (C) **Proof that the organization has been in existence for five (5) or more years.** (Emphasis added).
- 7) Indiana Code section 4-32-6-20 states that the organization must be "operating". The Department gives this word its ordinary and plain

meaning. Operating is defined by Webster's Dictionary as, "adj. of, relating to, or used for or in operations." The word "operate" means, "1 : to bring about: EFFECT 2 a : to cause to function : WORK b : to put or keep in operation..." Webster's New Collegiate Dictionary (1979).

CONCLUSIONS OF LAW

- 1) The Petitioner's representative conceded in hearing that additional information supporting its claim of five years of continuous existence should have been provided with its application when he stated, "...After I looked through the information, I guess you needed more information about our existence." (Record at 45).
- 2) The lack of detailed information supporting the Petitioner's claim of five years of continuous existence in conjunction with the fact that Petitioner's officers failed to sign its applications were sufficient to support the denial the Petitioner's application.
- 3) It is clear that the Petitioner was lax in its attention to detail. These oversights may seem trivial to the Petitioner, but the information gathered on the CG-1 and CG-2 is vital in qualifying an organization to conduct gaming.
- 4) However, the missing information can be provided and the application resubmitted again in its completed form.
- 5) The mere fact that Petitioner's rent may exceed the \$200 limitation is not enough to justify a denial.
- 6) A damage clause in a rental agreement is standard legal language, and is a basic component of common law. This simple clause meant to protect the owner of the property from incurring expenses for damage occurring to his property may not be used to deny a license.
- 7) If damage occurs in the future, on a regular basis, and the amount of rent charged is in excess of the actual costs of repair then the Department may have justification to investigate whether or not the rental limitation is exceeded, but not until then.
- 8) The Department's arbitrary requirement of one (1) internal document and two (2) external documents is neither based upon the code or regulation. Either the applicant provides sufficient documentation to support its claim of five (5) years existence or not. The Department's denial cannot be based upon criteria wholly unsupported by Indiana law.
- 9) The seemingly inconsistent answers to questions 7 and 8 of the Petitioner's CG-2 is trivial in nature, and was easily explained by the Petitioner.

DEPARTMENTAL ORDER

Following due consideration of the entire record, the Administrative Law Judge recommends the following:

Petitioner's appeal is denied.

- 1) Under IC 6-8.1-5-1, the organization may request a rehearing. However, rehearings are granted only under unusual circumstances. Such circumstances are typically the existence of facts not previously known that would have caused a different result if submitted prior to issuance of the Departmental Order.
- 2) A request for rehearing shall be made within seventy-two (72) hours from the issue date of the Departmental Order and should be sent to the Indiana Department of Revenue, Legal Division, Appeals Protest Review Board, P.O. Box 1104, Indianapolis, Indiana 46206-1104.
- 3) Upon receipt of the request for rehearing, the Department will review the respective file and the rehearing request to determine if sufficient new information has been presented to warrant a rehearing.
- 4) The Department will then notify the organization in writing whether or not a rehearing has been granted. In the event a rehearing is granted, the organization will be contacted to set a rehearing date.
- 5) If the request for rehearing is denied or a request is not made, all administrative remedies will have been exhausted. The organization may then appeal the decision of the Department to the Court of proper jurisdiction.

THIS DEPARTMENTAL ORDER SHALL BECOME THE FINAL ORDER OF THE INDIANA DEPARTMENT OF STATE REVENUE UNLESS OBJECTIONS ARE FILED WITHIN SEVENTY-TWO (72) HOURS FROM THE DATE THE ORDER IS ISSUED.

Dated: _____
Bruce R. Kolb / Administrative Law Judge